



FILED

03-06-12
11:36 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cox California Telcom, LLC (U5684C),

Complainant,

vs.

Vaya Telecom, Inc. (U7122C),

Defendant.

Case 11-09-007
(Filed September 9, 2011)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1. Summary

Following a prehearing conference on February 2, 2012, and pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure, this ruling and scoping memo sets forth the scope, schedule, category, the need for evidentiary hearings, and designates the presiding officer for this proceeding.

2. Background and Procedural History

Cox California Telcom, LLC (Cox) and Vaya Telecom, Inc. (Vaya) each holds a certificate of public convenience and necessity to provide local exchange and interexchange services in California. Cox filed this complaint against Vaya on September 9, 2011. As clarified at the prehearing conference (PHC), Cox alleges that Vaya owes Cox over \$2.5 million, including late charges, under the Cox Switched Access Tariff for Cox's termination of approximately 92.3 million minutes of intrastate toll traffic originated by Vaya's customers, or its customers'

customers, for the time period from October 6, 2010 through September 2011, when the complaint was filed. Because the two carriers are not parties to a negotiated interconnection agreement, Cox argues that the rate under its Switched Access Tariff applies to its termination of this Vaya traffic. Vaya disputes these charges and the specific nature of the Cox-terminated traffic, but states it would agree to enter into an interconnection agreement with Cox.

In January 2012, the parties unsuccessfully attempted to mediate this dispute through the Commission's Alternative Dispute Resolution Program. The assigned Administrative Law Judge (ALJ) cancelled the January 9, 2012, PHC and reset it for February 2, 2012, to permit the mediation to go forward. At the subsequent PHC, the ALJ directed the parties to meet and confer and to provide her, by email on February 10, 2012, with a joint, procedural status report and schedule that would permit hearing on April 19, 2012, should they be unable to reach a comprehensive stipulation of fact.

The parties' timely status report states that they have worked to narrow their factual dispute but that discovery has not been completed. The parties state that a limited number of facts may need to go to hearing and suggest similar, though not identical, schedules for hearing. However, both parties propose that the Commission bifurcate this matter, defer hearings, and determine, after the filing of concurrent briefs, the applicability of access charges to the traffic at issue.

Cox characterizes the legal issue, which the parties should brief, as follows:

Whether switched access charges or other intercarrier compensation charges, apply under applicable law to traffic subject to the Complaint, even if some or all of the traffic at issue was originated and/or terminated in Internet Protocol (IP) format, including, whether this answer changes at any

time as result of the FCC ICC Reform Order. (Parties' February 10, 2012 report to ALJ)

Vaya characterizes the legal issue slightly differently:

Whether switched access charges as specified in the Cox CA Switched Access Tariff identified in its Complaint, or other intercarrier compensation charges, apply under applicable law to traffic subject to the Complaint, even if some or all of the traffic at issue was originated and/or terminated in Internet Protocol (IP) format, including, whether this answer changes at any time as result of the FCC ICC Reform Order. (*Id.*)

3. Scope of the Proceeding

The ultimate issues before the Commission are: (1) whether the traffic Cox has terminated for Vaya, described as intrastate toll calls, has been properly characterized and if it has, (2) whether Vaya owes Cox compensation under the Cox Switched Access Tariff for terminating that traffic. Cox, as complainant, bears the burden of proof and must establish the facts to support its case in chief; Vaya must establish the facts to support its affirmative defenses. Were the parties able to stipulate to the underlying, material facts, then I agree that the Commission could – and should -- decide this case on the law. But where the material facts themselves are in dispute, any attempt to determine the applicable law is likely to be a resource intensive, theoretical exercise.

Because the parties have not shown good cause to bifurcate this matter, it should proceed under the procedural schedule set forth below, which is the version proposed by Cox. Vaya's proposal differs only in the apportionment of time for prepared testimony. Because Vaya's proposal excludes a rebuttal testimony round for Cox, it affords more time for Vaya's reply. The Cox proposal comports with Rule 13.4 of the Commission's Rules of Practice and Procedure, which provides that "[i]n hearings on complaints ... the complainant

... shall open and close.” The schedule also includes a date for the parties to file and serve a joint stipulation of fact.

4. Schedule for the Proceeding

The schedule for this proceeding is as follows:

Event	Date
March 9, 2012	Cox distributes opening prepared testimony
March 23, 2012	Vaya distributes reply testimony
April 6, 2012	Cox distributes rebuttal prepared testimony
April 13, 2012	Parties file/serve Joint Stipulation of Fact
April 19, 2012	Evidentiary Hearing at 10:00 a.m. Commission Courtroom State Office Building 505 Van Ness Ave. San Francisco, CA 94102
April 27, 2012	Parties file/serve concurrent opening briefs
May 7, 2012	Parties file/serve concurrent reply briefs; case submitted
July 5, 2012	Presiding Officer’s Decision filed

The presiding officer may revise the proceeding schedule, as necessary. Consistent with Pub. Util. Code § 1701.2(d), I anticipate that this proceeding will be completed within 12 months from its filing, unless the Commission extends the deadline pursuant to Section 1701.2(d).

5. Need for Evidentiary Hearings

Evidentiary hearings are set consistent with the schedule above.

6. Categorization and Ex Parte Communications

The Commission preliminarily categorized this proceeding as adjudicatory pursuant to Rule 7.1(b). No party appealed this categorization pursuant to Rule 7.6(a). Therefore, the categorization of this proceeding as adjudicatory is

now final. Ex parte communications are prohibited in adjudicatory proceedings pursuant to Rule 8.3(b).

7. Presiding Officer

ALJ Jean Vieth is designated the presiding officer pursuant to Rules 7.3(a) and 13.2(a).

IT IS RULED that:

1. The scope and schedule for this proceeding are set forth in the body of this ruling. The schedule may be revised, as appropriate, by the presiding officer.
2. Evidentiary hearing is set for April 19, 2012.
3. This is an adjudicatory proceeding. Ex parte communications are prohibited pursuant to Pub. Util. Code § 1701.2(b) and Rule 8.3(b) of the Commission's Rules of Practice and Procedure.
4. Administrative Law Judge Jean Vieth is designated the presiding officer for this proceeding pursuant to Rules 7.3(a) and 13.2(a) of the Commission's Rules of Practice and Procedure.

Dated March 6, 2012 at San Francisco, California.

/s/ MICHEL PETER FLORIO
Michel Peter Florio
Assigned Commissioner